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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-431

JOSEPH L. BROCCOLINO, JR.,

Petitioner,

v.

THE MARYLAND COMMISSION ON JUDICIAL DISABILITIES,

Respondent.

BRIEF IN OPPOSITION TO PETITION AND APPENDICES THERETO

LAURENCE M. KATZ,
500 W. Baltimore Street,
Baltimore, Maryland 21201,
Attorney for Respondent.

The Daily Record Co., Baltimore, Md. 21203

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OPINIONS BELOW

The opinions below are:

1. In the matter of the investigation of the Traffic Division of the Municipal Court of Baltimore City By the Special Grand Jury of Baltimore City (in the Criminal Court of Baltimore City, December 10, 1970) — Memorandum and Order (Respondent's Appendix 1).

2. In the matter of the investigation of the Traffic Division of the Municipal Court of Baltimore City By the Special Grand Jury of Baltimore City (in the Criminal Court of Baltimore City, April 16, 1971) — Petition and Order (Respondent's Appendix 2).

3. In re Investigation by Commission on Judicial Disabilities (in the Criminal Court of Baltimore City, October 26, 1971) — Petition and Order (Respondent's Appendix 3).

4. Report, Findings of Fact, Conclusions of Law and Recommendation of the Maryland Commission on Judicial Disabilities (January 1973) (Petitioner's Appendix VI, P.A. 122).

5. Opinion of the Court of Appeals of Maryland (Petitioner's Appendix III, P.A. 36).

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTIONS PRESENTED

Whether utilization of the minutes of a grand jury investigation into alleged traffic court corruption by a state judicial disabilities commission, which leads to the discovery of the evidence upon which a judge is removed from office, violates the removed judge's right to due process solely because he was not given an opportunity to contest delivery of the grand jury minutes to the commission where: (1) the removed judge did *not* testify before the grand jury; (2) at the time of delivery of the minutes, the commission's investigation of alleged corruption was not focused on this, or any other, particular judge of the traffic court; (3) the grand jury minutes were utilized only by the commission's staff as an investigative tool; (4) once the commission's staff's investigation had proceeded to the point that particular attention was focused on the removed judge, the judge was given notice that a "preliminary investigation" into his particular affairs was to commence, and he was given full opportunity to participate in that "preliminary investigation"; (5) the Commission itself did not inspect or rely upon the minutes

as a basis for its decision nor were they offered in evidence; (6) the Commission based its decision solely on evidence presented in formal hearings before it, only some of which was developed from "leads" suggested by the grand jury minutes; (7) prior to any investigatory deposition of witnesses before the commission staff or their appearance at the formal evidentiary hearing before the Commission, the removed judge was given access to the grand jury testimony, if any, of any such witness; and (8) the removed judge participated fully in all the evidentiary adversary hearings before the Commission.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Constitutional provisions involved are Amendment XIV, Constitution of the United States—

> "Section No. 1 . . . ; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws."

Article IV, Constitution of the State of Maryland—

> "Section 4A. Commission on Judicial Disabilities created; composition; appointment and terms of members; vacancies; compensation and expenses; chairman.
>
> (a) There is created a Commission on Judicial Disabilities composed of seven persons appointed by the Governor of Maryland. The members of the Commission shall be citizens and residents of this State. Four members of the Commission shall be appointed from among the judges of the appellate courts, the Circuit Courts for the Counties, the Supreme Bench of Baltimore City and the District Court; two members shall be appointed from among those persons who are admitted to practice law in the State, who have been so engaged for at least fifteen years, and who are not judges of any court; and one member shall represent the public, who

shall not be a judge, active or retired, and who is not admitted to practice law in this State. The term of office of each member shall be for four years commencing on January 1, except that of those persons first appointed to the Commission one shall be appointed for a term of one year, one for two years, one for three years, and two for four years and provided further that the additional lawyer member added by these amendments shall take office January 1, of the year next following adoption of these amendments by the voters and the additional judicial member on January 1, of the year after the additional lawyer member is to take office and thereafter all terms shall be for four years. Whenever any member of the Commission appointed from among judges in the State ceases to be a judge, when any member appointed from among those admitted to practice law becomes a judge, when any member representing the public becomes a judge or is admitted to the practice of law in this State, or when any member ceases to be a resident of the State, in such case the membership of this member shall forthwith terminate. Any vacancies on the Commission shall be filled for the unexpired term by the Governor in the same manner as for making of appointments to the Commission and subject to the same qualifications which were applicable to the person causing the vacancy. No member of the Commission shall receive any compensation for his services as such but shall be allowed any expenses necessarily incurred in the performance of his duties as such member."

"Section 4B. Removal or Retirement of Judge by General Assembly After Hearing by Commission on Judicial Disabilities.

(a) The Commission on Judicial Disabilities shall have the power to investigate complaints against any judge of the Court of Appeals, any intermediate courts of appeal, the Circuit Courts, the Supreme Bench of Baltimore City, the Orphans' Courts and all other judges appointed or elected if the full term of the office is not less than four years (including a judge holding office on

the date of adoption of this amendment); and to conduct hearings concerning the removal or retirement of a judge, administer oaths and affirmations, issue process to compel the attendance of witnesses and the production of evidence, and require persons to testify and produce evidence by granting them immunity from prosecution or from penalty or forfeiture. The Commission shall have the power to recommend to the Court of Appeals the removal or retirement of a judge. All proceedings, testimony, and evidence before the Commission shall be confidential and privileged, except that the record of any proceeding filed with the Court of Appeals shall lose its confidential character. No judge shall participate in any proceedings involving his own removal or retirement, and the Governor shall appoint another judge as a substitute member of the Commission for those proceedings. The Court of Appeals shall prescribe by rule the means to implement and enforce the powers of the Commission and the practice and procedure before the Commission.

(b) Upon recommendation of the Commission that a judge be removed from office, or that he be retired, the Court of Appeals, after a hearing and upon a finding of misconduct while in office, or of persistent failure to perform the duties of his office, or of conduct prejudicial to the proper administration of justice, may remove the judge from office or may censure him, or the Court of Appeals, after hearing and upon a finding of disability which is or is likely to become permanent and which seriously interferes with the performance of his duties, may retire the judge from office. A judge removed under this section, and his surviving spouse, shall have the rights and privileges accruing from his judicial service only to the extent prescribed by the order of removal. A judge retiring under this section shall have the rights and privileges prescribed by law for other retired judges. No judge shall sit in judgment in any hearing involving his own removal or retirement.

(c) This section is alternative to, and cumulative with, the methods of retirement and removal provided

in Sections 3 and 4 of this Article, and in Section 26 of Article III of this Constitution."

Also involved is Maryland Rule 1227 reproduced at Respondent's Appendix 4.

STATEMENT OF THE CASE

The Maryland Commission on Judicial Disabilities[1] is an official state body, created by the Constitution of the State of Maryland. Md. Const. Art. IV, Sec. 4A. It is composed of seven persons appointed by the Governor of Maryland. Four members are judges, two are practicing attorneys having at least fifteen years experience and one is a layman. The term of each of the members is four years, and each member serves without compensation.

The Commission has the power to investigate complaints against any judge of the Court of Appeals of Maryland, any intermediate courts of appeal, the Circuit Courts, the Supreme Bench of Baltimore City, the Orphans' Court and all other judges appointed or elected if the full term of the office is not less than four years. It may hold hearings concerning the removal or retirement of a judge, administer oaths and affirmations, issue process to compel the attendance of witnesses and the production of evidence, and require persons to testify and produce evidence by granting them immunity from prosecution or from penalty or forfeiture. After a hearing, the Commission is empowered, where warranted, to recommend to the Court of Appeals of Maryland the censure, removal or retirement of a judge who has committed acts constituting misconduct in office, or who has persistently failed to perform the duties of office, or who has engaged in conduct prejudicial to the proper administration of justice. The procedure before the Commission is governed by an extensive rule adopted by the Maryland

[1] Hereinafter referred to as the "Commission".

Court of Appeals. Md. Rules, R. 1227 (R.A. 15).[2] This case is the first one in which the Commission has made a recommendation to the Court of Appeals. For a general description of the methods used by various states to discipline judges see, Braithwaite, *Who Judges the Judges? — A Study of Procedures for Removal and Retirement* (American Bar Foundation, 1971) and American Judicature Society, *Selected Readings, Judicial Discipline and Removal* (1973).

On November 10, 1969, a Special Grand Jury of Baltimore City was convened for the purpose of investigating the Traffic Division of the Municipal Court of Baltimore City. After almost a full year it completed its work on October 26, 1970. An interim public report of the Grand Jury observed:

> "In addition, this Special Grand Jury will submit the evidence to the Baltimore City Bar Association with a recommendation that appropriate disciplinary action be taken against the several attorneys whose names were repeatedly linked with those of the offending bondsmen."

The report also stated:

> "Nevertheless, we recommend that the State's Attorney reveal the names of the attorneys involved and the names, of the clients to the Baltimore City Bar Association for appropriate action."

Based upon the testimony it heard and the evidence presented to it, the Grand Jury issued a number of indictments against various court personnel. Joseph L. Broccolino, Jr., the Petitioner, herein, was not indicted.

As a result of the considerable publicity attendant to the existence of the Grand Jury investigation and the indictments it issued, and after the Grand Jury had been discharged, a special committee of the Bar Association of Balti-

[2] References to the Respondent's Appendix are noted as "R.A."

more City petitioned the Criminal Court of Baltimore City for release unto it of portions of the Final Report. After hearing arguments of counsel for the Bar Association and the State's Attorney for Baltimore City (who opposed the Petition) on December 16, 1970, Judge J. Gilbert Prendergast, issued an Order establishing a procedure by which a Special Master (a retired judge of the Supreme Bench of Baltimore) was appointed to review the Final Report and transcript of the proceedings to be delivered to the Bar Association Special Committee. The master was to review "the testimony of any judge and lawyer and any other testimony which may be indicative of judicial or professional misconduct" but to exclude "matter which may affect or be prejudicial to the defense of any case in which a pending indictment has resulted." The complete Order and accompanying memorandum of the court is attached as Appendix 1 (R.A. 1). The Order was subsequently amended on April 16, 1971 pursuant to a Petition by the State's Attorney of Baltimore City. The April 16, 1971 Order authorized and directed the State's Attorney to release directly to the Bar Association the contents of the Final Report of the Special Grand Jury together with the complete transcript of testimony. Further, the Bar Association was to release the Report and testimony "to authorized persons with respect to any disciplinary proceeding which it may recommend or initiate . . ." (R.A. 8).

On June 7, 1971, the Executive Committee of the Bar Association of Baltimore City referred to the Commission on Judicial Disabilities the results of the lengthy investigation conducted by the Special Grand Jury of Baltimore City empanelled to inquire into alleged improprieties in the operations of the Traffic Division of the Municipal Court of Baltimore City. The referral included a covering letter and a Report (Respondent's Appendix 5, R.A. 23) along with

a large number of abstracts prepared by the State's Attorney of cases investigated and presented to the Grand Jury along with a set of audit reports. The Bar Association did not specify any particular judge against whom it was making a complaint.

The Commission employed special counsel who, together with the Commission's Executive Secretary, reviewed, digested and summarized all of the evidence presented to the Grand Jury. Members of the Commission itself did not participate in this review. At the conclusion of the review, special counsel and the Executive Secretary on September 30, 1971 reported their findings to the Commission. As a result, the Commission decided to proceed with a "preliminary investigation" of two judges, including Joseph L. Broccolino. With the concurrence of the State's Attorney of Baltimore City the Commission petitioned for and received an order that the Grand Jury testimony be formally supplied to it, in its own name and for its own use (See Respondent's Appendix 3, R.A. 12). Pursuant to Md. Rule 1227 notice was given to Judge Broccolino that the Commission would conduct a preliminary investigation (See Respondent's Appendix 8, R.A. 28).

Special counsel and the Commission's Executive Secretary undertook an independent examination and analysis of the Municipal Court records reviewing, for the years 1967 to 1970 literally hundreds of traffic tickets, court slips and docket entries. At the request of the Commission the State Auditors ran a full examination of the traffic court records for six (6) selected months. Interviews were conducted with many individuals and a number of formal depositions were taken. Throughout the entire course of the preliminary investigation, counsel for Judge Broccolino, and Judge Broccolino himself, were present at all depositions and given the

opportunity to cross-examine all deponents and note any objections upon the record. Moreover, whenever a deponent was an individual who had testified before the Grand Jury, Judge Broccolino and his counsel were given a copy of the entire transcript of that individual's testimony to the Grand Jury to review in advance of the deposition. In addition pursuant to Maryland Rule 1227 Judge Broccolino and his counsel were given the opportunity to present any written statement, but elected not to do so.

At the conclusion of the preliminary investigation a Report of Preliminary Investigation summarizing the evidence was presented to the Commission along with copies of the depositions taken and the exhibits thereto. After a review of all this evidence, the Commission determined to institute formal proceedings and pursuant to Md. Rule 1227 (g) formal notice was served upon Judge Broccolino under date of October 5, 1972 (Respondent's Appendix 8). At that time Judge Broccolino already had copies of all depositions and the exhibits and had read copies of the transcript of the grand jury testimony of all deponents who had also testified before the Grand Jury. The notice included a copy of the Report of Preliminary Investigation (See Respondent's Appendix 8). Through his counsel, Judge Broccolino filed an answer in due course and a formal hearing was conducted, commencing on November 20, 1972.

The formal proceedings spanned eight (8) days, during which time the Commission heard the testimony of eighteen (18) witnesses concerning transactions, court dispositions and "ticket fixing" in the Traffic Division of the Municipal Court. No grand jury testimony was presented. Judge Broccolino and his counsel were present throughout and exercised their right to cross-examine witnesses and presented evidence in his own behalf.

The findings of the Commission, as disclosed in its "Report, Findings of Fact, Conclusions of Law and Recommendation was:

> "Our review of the entire record, including all of the testimony and the exhibits filed, leads us inescapably to the conclusion that . . . Judge Broccolino did in fact, in disposing of parking ticket cases, reach verdicts of either 'not guilty', or did suspend and/or reduce fines for reasons that can only be described as friendship, or political favoritism, or the importuning by court clerks." (P.A. 138).[3]

The Commission concluded, therefore, that Judge Broccolino "engaged in conduct which was prejudicial to the proper administration of justice," (P.A. 141).

The Court of Appeals of Maryland, after a hearing, "made an independent review of the entire record" (P.A. 46) and determined that the Commission's findings of fact were "supported by clear and convincing evidence" (P.A. 46-47). Petitioner Broccolino does not contest these findings in his Petition. The Court of Appeals of Maryland ordered that Judge Broccolino be removed as a judge of the District Court of Maryland (P.A. 65-66). Subsequently, the Court denied a "Petition for Re-Argument" asserting the same position presented in the Petition for a Writ of Certiorari.

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[3] References to the Petitioner's Appendix are noted as "P.A."

ARGUMENT

PETITIONER RAISES NO SUBSTANTIAL QUESTION. ON THE BASIS OF FACTS, NOT CHALLENGED BY PETITIONER, THE COURT OF APPEALS OF MARYLAND FOUND THAT HIS CONDUCT WAS "PREJUDICIAL TO THE PROPER ADMINISTRATION OF JUSTICE" AND ORDERED THAT HE BE REMOVED AS A JUDGE. IT WAS NOT A DENIAL OF DUE PROCESS FOR THE CRIMINAL COURT OF BALTIMORE CITY TO RELEASE MINUTES OF THE GRAND JURY INVESTIGATING CORRUPTION TO THE COMMISSION FOR NEITHER THE DUE PROCESS CLAUSE, RELEVANT CASE LAW NOR JUSTICE REQUIRE THAT GRAND JURY MINUTES BE KEPT SECRET WHEN SUCH SECRECY WILL BUT SERVE THE INTERESTS OF THE CORRUPT. PETITIONER'S DUE PROCESS RIGHTS WERE AMPLY SERVED WHEN HE WAS GIVEN COPIES OF ALL GRAND JURY TESTIMONY OF WITNESSES WHO WERE CALLED TO TESTIFY AT DEPOSITIONS AND HEARINGS OF THE COMMISSION PRIOR TO THEIR TESTIMONY.

Petitioner contends that he was denied due process of law because prior to the institution of any investigation into his activities as a judge of the District Court of Maryland certain minutes of the grand jury investigating allegations of corruption in that court were made available to a Special Committee of the Bar Association of Baltimore City and subsequently to the Maryland Commission on Judicial Disabilities. It is important to note that Petitioner Broccolino does not contest the sufficiency of the evidence upon which both the Commission and the Court of Appeals of Maryland concluded that "Judge Broccolino did in fact, in disposing of parking ticket cases, reach verdicts of either 'not guilty', or did suspend and/or reduce fines for reasons that can only be described as friendship, or political favoritism, or the importuning by court clerks" (P.A. 138). Nor does he suggest that he was not given access to and copies of all grand jury testimony of deponents and witnesses before the Commission. In fact he was supplied with copies of such testimony at all times after the investigation into alleged judicial

misconduct had gone beyond a general investigatory stage and had begun to focus particularly on the Petitioner.

The only complaint of Petitioner is that he was not given notice of the request for the release of those minutes unto the Bar Association and unto the Commission. Petitioner suggests in effect that prior to the release of grand jury testimony to any official investigatory body that the due process clause requires that all persons who may become possible future defendants in proceedings resulting from the investigations by these official bodies be identified in advance and be given formal notice and an opportunity to resist release. Such a procedure would be impossible to administer. The Special Grand Jury hearing evidence for almost a full calendar year, heard from approximately 270 witnesses describing the activities of policemen, "ticket-fixers", court clerks, bailiffs, court secretaries, court cashiers, attorneys, politicians, judges of that court and numerous members of the public. It would be unreasonable to suggest that each such person mentioned in such testimony before the Grand Jury had the right to notice and the right to resist the petitions of the Bar Association and Commission on Judicial Disabilities. Procedural difficulties aside, requiring such notice would serve no useful purpose. Neither the due process clause nor any other rule of law mandates that grand jury minutes be kept secret in circumstances such as these.

Providing for secrecy during grand jury proceedings serves a number of useful purposes. It lessens the likelihood that a potential criminal defendant will abscond before arrest; it encourages citizens to testify more freely and it aids in protecting the innocent against whom an investigation may be directed but against whom no indictment is ever presented. Traditionally, therefore, grand jury investigations have been conducted in complete secrecy. This has long been true in the State of Maryland. *Coblentz v. State*, 164 Md. 558, 166 A.

45 (1933); *Izer v. State*, 77 Md. 110, 26 A. 282 (1893); *Kirk v. Garrett*, 84 Md. 383, 35 A. 1089 (1896).

Petitioner Broccolino, however has no vested Constitutional right to the continued secrecy of grand jury testimony after the grand jury has been discharged. As stated by the Court in *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150 (1940):

> "Grand Jury testimony is ordinarily confidential. But after the Grand Jury's functions are ended, disclosure is wholly proper when the ends of justice require it."

This is so even as to those who were witnesses.

> "There remains therefore on principle no cases at all in which, after the Grand Jury's functions are ended, the privilege of witnesses not to have their testimony disclosed should be deemed to continue." Wigmore, on Evidence, Vol. VIII, Section 2363, page 725.

Judge Prendergast recognized and applied the standard set forth in *United States v. Socony-Vacuum Oil Co., supra*, when he stated in his memorandum opinion that "the web of secrecy is not inviolate and when the ends of justice cry out for disclosure, then the veil of secrecy must be removed, at least to some extent" (R.A. 3).

> "The repeated insistence of the special grand jury that its records be turned over to the Bar Association suggests a distinct analogy between the present condition and that which arose in *Doe v. Rosenberry*, 152 F. Supp. 403 (D.C. S.D., New York, 1957). There an attorney sought an order directing the Grievance Committee of the Association of the Bar of the City of New York to return a transcript of testimony before a Federal grand jury which was specially convened to consider charges of government corruption, obtained pursuant to a prior court order authorizing its release by the United States Attorney. There was no indictment but the grand jury voted to refer the petitioner's activities to the Bar Asso-

ciation for investigation. In rejecting the motion, the District Court approved the earlier order releasing the testimony to the Bar Association and observed that the interest of justice required that this be done. In other Federal jurisdictions, the same result has followed, usually under Rule 6(e) of the Federal Rules of Criminal Procedure. See In re Bullock, 103 F. Supp. 639 (D.C. 1952); *In Re Grand Jury Transcript*, 309 F. Supp. 1050 (S.D. Ohio 1970); *Pittsburgh Plate Glass Co. v. United States*, 360 U.S. 395, 398-9; 79 S. Ct. 1237; 3 L. Ed. 2d 1323."

Judge Prendergast concluded that "justice and perhaps public policy require disclosure of the data compiled by the grand jury under the circumstances believed to exist here" (R.A. 5).

It is submitted therefore, that no constitutional right of the Petitioner, Broccolino, was abridged by the act of disclosing the Grand Jury Testimony to the Special Committee of the Bar Association of Baltimore City and the Maryland Commission on Judicial Disabilities and that the Criminal Court of Baltimore City acted properly in disclosing the Grand Jury testimony to the Commission.

This Court has indicated that there are circumstances under which a defendant in a proceeding based at least in part upon grand jury testimony may have a right to access to grand jury testimony. *United States v. Proctor and Gamble Co., Inc.*, 356 U.S. 77 (1958); *Dennis v. United States*, 384 U.S. 855 (1966). See also *Silbert v. State*, 12 Md. App. 516, 523, 280 A.2d 55 (1971) where the Maryland Court of Special Appeals stated: "While there is no absolute right to inspect Grand Jury testimony, a criminal accused may in a proper case be afforded access to Grand Jury minutes if he demonstrates a particularized need for disclosure."

It is unnecessary to determine whether the case under consideration is such a case where the absolute right exists. Whether the right existed or not during the investigation stage, Broccolino was in fact given copies of all the grand jury testimony relating to him. The Grand Jury testimony was not the basis for the Commission's recommendation or for the Court of Appeals of Maryland's Order. The Commission's recommendation as disclosed in its Report was based upon its findings at the conclusion of the evidentiary Formal Proceedings, where it heard the live testimony of numerous witnesses. The Court of Appeals of Maryland based its Order upon the argument before it, a review of the Transcript of the Formal Proceeding and the Commission Report.

The Grand Jury testimony was used by Commission counsel simply as a basis for discovering individuals to depose during the investigatory stage. Petitioner Broccolino was given exact transcripts of the grand jury testimony of all such deposed witnesses. There is no basis to suggest that the Fourteenth Amendment to the United States Constitution so circumscribes the right to access to the results of a grand jury investigation unto a state governmental body charged by law to inquire into judicial behavior.

CONCLUSION

Based upon the authorities set forth above, the Petition for Writ of Certiorari to the Supreme Court of the United States in the instant case should be denied.

Respectfully submitted,

LAURENCE M. KATZ,
500 W. Baltimore Street,
Baltimore, Maryland 21201,
Attorney for Respondent.

APPENDIX 1

MEMORANDUM AND ORDER

In the Criminal Court of Baltimore City

In the Matter of the Investigation of the Traffic Division of the Municipal Court of Baltimore City by the Special Grand Jury of Baltimore City

The question arising here is whether the court may properly reveal to a special committee of the Bar Association of Baltimore City certain portions of the Final Report and minutes of the special grand jury convened to investigate, among other things, the Traffic Division of the Municipal Court of Baltimore City. That grand jury is now discharged and its report has been ordered sealed by this court, subject to the further order of the court. Earlier, at the request of the State's Attorney's office, the court had ordered, under restrictive conditions, the release of portions of testimony of witnesses appearing before the grand jury to the duly authorized representative of the Bar Association but this order was rescinded on motion of the Acting State's Attorney on November 19, 1970. The Bar Association now moves for the release of portions of the data sought and the court grants the motion, with specific limitations and restrictions set forth in the order appended to this memorandum.

The Facts

As the result of publicity in the local press concerning matters uncovered in the Traffic Division of the Municipal Court, the State's Attorney of Baltimore City then in office, Hon. Charles E. Moylan, Jr., petitioned the court to convene a special investigative grand jury for the purposes already mentioned. Pursuant to Section 262B, Subsection

(b) of the Charter and Public Local Laws of Baltimore City, as amended by Chapter 740 of the Acts of 1969, the court then passed an order convening the additional or special grand jury for the purposes indicated and of investigating "the structure of the organized gambling syndicate in the City of Baltimore and its possible tie-in to both bail bondsmen and attorneys operating in this city and its possible tie-in to certain governmental officials.

On December 8, 1969, the additional grand jury was duly organized and charged by the judge presiding in Criminal Court Part I as to its duties and functions.

Eventually, this grand jury was finally discharged on October 26, 1970, but during its existence it returned a number of indictments against various individuals, including a judge of the Municipal Court, three bail bondsmen, two clerks and an auditor of the Traffic Division. An interim report was filed on June 30, 1970, and its contents have not been sealed or otherwise withdrawn from public view. It is interesting to note that the interim report contains the following observation:

> "In addition, this Special Grand Jury will submit the evidence to the Baltimore City Bar Association with a recommendation that appropriate disciplinary action be reveal the names of the attorneys involved and the names repeatedly linked with those of the offending bondsmen."

Later in the report, the special grand jury stated:

> "Nevertheless, we recommend that the State's Attorney reveal the names of the attorney involved and the names of the clients to the Baltimore City Bar Association for appropriate action."

Shortly before the special grand jury was discharged, the State's Attorney's Office applied for the initial order to disclose some of the data compiled by the special grand jury and appended to this was a memorandum reading as follows:

> "On 8/28/70 the Special Grand Jury voted that the State's Attorney's Office should turn over to the Bar

> Association all cases discovered during the course of the investigation in which there was apparent professional misconduct by either judge or attorneys."

The resultant order of the court authorizing limited disclosure of the special grand jury's findings was rescinded at the request of both the Acting State's Attorney and David P. Gordon, Esquire, representing the Bar Association. It was believed to be more appropriate that the motion come from the Bar Association rather than from the office of the State's Attorney which is currently prosecuting the charges resulting from the indictments returned. Thereupon, the motion of the Bar Association was filed and the court announced that a decision would be rendered after memorandum of legal authorities had been submitted by any parties in interest. To date the court has received three memoranda from the Bar Association.

Discussion

It has long been recognized that the proceedings of a grand jury are cloaked with secrecy and ordinarily not subject to disclosure. *Izer v. State*, 77 Md. 110; *Kirk & Son v. Garrett*, 84 Md. 383; *Hooker v. State*, 98 Md. 145; *In Re Report of Grand Jury*, 152 Md. 616; and *Coblentz v. State*, 164 Md. 558. However, the rule of secrecy is not inviolate and when the ends of justice cry out for disclosure, then the veil of secrecy must be removed, at least to some extent. In *Izer v. State, supra*, a defendant charged with perjury before a grand jury contended that the evidence of his crime could not be revealed because the secrecy of the grand jury must be preserved. In rejecting this argument, the Court of Appeals of Maryland, speaking through Judge (later Chief Judge) McSherry, said, at page 111:

> "But this is obviously fallacious. *The authority which, to promote the public welfare, has imposed upon grand jurors the obligation of secrecy may, when the same public welfare requires it, dispense with its observance.* . . . The oath of the grand juror undoubtedly precludes him for all time from voluntarily, and of his own motion,

> or at his own instance, divulging the Counsel of the State, his fellows or his own; but there is in the very nature of things a tacit condition implied that, in the furtherance of justice, the juror shall, in some instances, speak when the law through its constituted tribunals, explicity commands him to do so."

Mr. Justice Douglas has succinctly stated the modern view of the rule in these words:

> "Grand Jury testimony is ordinarily confidential. * * * but after the Grand Jury's functions are ended, disclosure is wholly proper where the ends of justice require it."

United States v. Socony-Vacuum Oil Company, 1940, 310 U.S. 150, 233, 60 S. Ct. 811; 84 L. Ed. 1129.

The repeated insistence of the special grand jury that its records be turned over to the Bar Association suggests a distinct analogy between the present condition and that which arose in *Doe v. Rosenberry*, 152 F. Supp. 403 (D.C. S.D., New York, 1957). There an attorney sought an order directing the Grievance Committee of the Association of the Bar of the City of New York to return a transcript of testimony before a Federal grand jury which was specially convened to consider charges of government corruption, obtained pursuant to a prior court order authorizing its release by the United States Attorney. There was no indictment but the grand jury voted to refer the petitioner's activities to the Bar Association for investigation. In rejecting the motion, the District Court approved the earlier order releasing the testimony to the Bar Association and observed that the interest of justice required that this be done. In other Federal jurisdictions, the same result has followed, usually under Rule 6(e) of the Federal Rules of Criminal Procedure. See *In Re Bullock*, 103 F. Supp. 639 (D.C. 1952); *In Re Grand Jury Transcript*, 309 F. Supp. 1050 (S.D. Ohio 1970); *Pittsburgh Plate Glass Co. v. United States*, 360 U.S. 395, 398-9; 79 S. Ct. 1237; 3 L. Ed. 2d 1323.

While Maryland has no rule corresponding to Federal Criminal Rule 6(e) it is believed that the broad powers of investigation by Bar Associations set forth in Maryland Rule BV2 clearly suggest that justice, and perhaps public policy, require the disclosure of the data compiled by the grand jury under the circumstances believed to exist here.

In *People v. Behan*, 235 N.Y. Supp. 2d 225 (1962), a Special Commissioner of the State of New York, empowered to investigate government corruption, petitioned for inspection of grand jury minutes revealing misconduct of public officials in the management and operation of a county jail. Although this petition was opposed by the District Attorney, just as the pending petition is opposed by the State's Attorney, the court granted the petition, saying in its opinion that:

> "The work of the May 1962 Grand Jury has been completed. There can be no interference with its work since it is no longer in existence, having been discharged on August 31, 1962. *The grounds advanced by the District Attorney for keeping inviolate the proceedings of the Grand Jury, impressive though they may be, are outweighed by the public interest involved in the furtherance of the administration of justice, and in the facilitation of the investigation ordered by the Governor and the Attorney General.* For the reasons stated, the petitioner's motions are granted." (Emphasis added).

The State's Attorney suggests that there would be no objection to disclosing to the Bar Association the names of the witnesses who had testified before the Grand Jury so as to permit the Association to question them again. This suggestion was unacceptable to the Bar Association because there simply are no funds available to conduct such a lengthy and costly investigation as is proposed. Parenthetically, it may be noted that as a general rule a witness is not precluded from divulging his testimony before a grand jury where he has not been sworn to secrecy. At least, this is the rule stated in 38 Am. Jur. 2d *Grand Jury* Section 40 and applied in *State v. Minet*, 296 N.Y. 315, 73 N.E.2d 529, 4 A.L.R.2d 386 (1947).

Conclusion

Since the functions of the special grand jury have come to an end, the question as to whether its report and the transcripts of testimony taken before it shall be revealed to any authorized person or association rests within the sound discretion of the court. In exercising that discretion, the court has the responsibility of determining whether disclosing such information is required by the ends of justice or is necessary because the public interest or welfare is affected. It is suggested here that the special grand jury came upon information indicating professional misconduct which it desired be investigated by the Bar Association and the court concludes that in the interest of justice and for the public good the wishes of the grand jury must be honored.

There remains the problem as to how this is to be put into effect. Every precaution must be taken to see to it that no information is revealed to any person which relates to the pending indictments and that such information as is to be disclosed must be kept secret until such time as charges may be preferred, if in fact they are, by the Bar Association against any individual believed to be guilty of professional misconduct. To that end the court will appoint a Special Master, whose responsibility it shall be to read, study and carefully filter the report of the special grand jury and all transcripts of testimony taken before it. He shall then turn over such portions of that testimony as do not in any respect touch upon pending indictments to the Chairman of the Special Committee, Municipal Courts Investigation, of the Bar Association of Baltimore City. He in turn will see to it that whatever investigation is indicated shall be conducted by a designated individual who shall preserve secrecy as to the matter entrusted in his care. An appropriate order giving effect to his conclusion follows.

ORDER

Upon the Petition of The Bar Association of Baltimore City and after having heard the argument of counsel for the Association and the State's Attorney for Baltimore City it is

this 10th day of December, 1970, by the Criminal Court of Baltimore City,

ORDERED that the State's Attorney for Baltimore City be and is hereby directed to deliver the Final Report and transcript of proceedings before the Special Grand Jury, in respect of its investigation of the operations of the Traffic Division of the Municipal Court of Baltimore City, to the Honorable S. Ralph Warnken, who is hereby appointed as a Special Master to review the aforementioned Final Report and transcript of proceedings for the purpose of designating the portions thereof to be delivered to David P. Gordon, Chairman of the Special Committee on the Municipal Court Investigation. The portions of the Final Report and transcript which shall be delivered by the Master shall include the testimony of any judge and lawyer and any other testimony which may be indicative of judicial or professional misconduct. The Master shall exclude from such portions matter which may affect or be prejudicial to the defense of any case in which a pending indictment has resulted.

It is FURTHER ORDERED that David P. Gordon is empowered and authorized to disclose the portions of the aforementioned Report and transcript delivered solely to such officers and committees of The Bar Association of Baltimore City as may be approved by the Master for consideration of the initiation of disciplinary proceedings, which officers and/or committees may use the information as a basis to initiate and conduct investigations of judges and disciplinary proceedings against attorneys suspected of having engaged in judicial or professional misconduct.

It is FURTHER ORDERED that the Final Report of the Special Grand Jury be and is hereby unsealed but only for the purposes set forth in this Order.

It is FURTHER ORDERED that the action taken hereunder is subject to further order of this Court.

J. GILBERT PRENDERGAST,
Judge.

APPENDIX 2

PETITION

In The Criminal Court of Baltimore City, State of Maryland

In the Matter of the Investigation of the Traffic Division of the Municipal Court of Baltimore City by the Special Grand Jury of Baltimore City

NOW COMES THE STATE OF MARYLAND by and through Milton B. Allen, State's Attorney for Baltimore City, and makes application to this Honorable Court for an Order permitting the State's Attorney of Baltimore City to disclose the contents of the Final Report and transcript of the proceedings before the Special Grand Jury of Baltimore City in the above-captioned matter to the members of the Special Committee on the Municipal Court Investigation of the Bar Association of Baltimore City. And in support of the aforesaid application your petitioner sets forth the following facts and circumstances:

On 26 October 1970 said Special Grand Jury completed its investigation into the operation of the Traffic Division of the Municipal Court of Baltimore City and returned a report to this Honorable Court. At that time the report was sealed and the Grand Jury was discharged. Thereafter, on 7 November 1970, this Honorable Court issued an Order authorizing the State's Attorney of Baltimore City to disclose the contents of the Final Report of said Special Grand Jury to members of the Special Committee on the Municipal Court Investigation of the Bar Association of Baltimore City together with pertinent portions of the testimony taken before said Special Grand Jury as it related to possible professional misconduct of Judges or Attorneys.

On 20 November 1970, the then Interim State's Attorney, Howard L. Cardin, petitioned this Honorable Court to rescind the Order of November 7th on the ground that any disclosure would possibly prejudice the State's case against four Municipal Court officials who are under indictment. Pursuant to that application, this Honorable Court issued an Order on the *10th* day of *December*, 1970, which provided inter alia that the Honorable S. Ralph Warnken would review the 518 files in the State's Attorney's Office and would turn over to said Special Committee of the Bar Association those files which involved individuals other than those against whom indictments have been returned. Pursuant to that Order, Judge Warnken has screened 200 cases of which 43 have been turned over to David P. Gordon, the Chairman of said Special Committee of the Bar Assocation. Another 160 cases have been outlined, but the typing of the outlines has not yet been completed. It will be some weeks before they can be submitted to Judge Warnken for screening. Said 360 cases would seem to represent the bulk of the cases in which the Bar Association would be interested from the standpoint of professional or other misconduct. The remaining 158 cases involve driving while intoxicated.

As the complexity of the cases has been extremely time-consuming and it does not appear that the State's Attorney's Office can bring the indictments to trial within the reasonably near future, your petitioner believes that it is in the public interest that said Special Committee of the Bar Association have available to it immediately the transcript of the proceedings and all the information, exhibits and data accumulated with respect to the subject of said investigation. Your petitioner believes this is essential and desirable so the Bar Association may promptly and intelligently make recommendations with respect to changes in the system prevailing in the Traffic Division of the Municipal Court and also to initiate such proceedings as the facts justify against judges of said court and lawyers who have violated their trust or been guilty of professional misconduct. Your petitioner believes that the plan authorized in the Order of this Court dated *December 10*, 1970, is unduly restrictive and to some extent not feasible. Your petitioner also believes that if the

disclosure is limited to said Special Committee of the Bar Association the fair and impartial trial of the pending indictments will not be affected thereby. Your petitioner further believes that the requested action is urgently needed and that to delay until after the trial of the indictments would not be in the public interest and would tend to affect a desirable reform of the court system at this very important time.

WHEREFORE, your petitioner respectfully prays that this Honorable Court pass an Order authorizing and directing your petitioner to disclose to the members of the Special Committee on the Municipal Court Investigation of the Bar Association of Baltimore City the contents of the Final Report of the Special Grand Jury investigating the operation of the Traffic Division of the Municipal Court and the transcript of its proceedings and all the information, exhibits and data accumulated with respect to said investigation.

Respectfully submitted,

MILTON B. ALLEN,
State's Attorney,
April 15, 1971.

ORDER

In the Criminal Court of Baltimore City
State of Maryland

In the Matter of the Investigation of the Traffic Division of the Municipal Court of Baltimore City by the Special Grand Jury of Baltimore City

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THE STATE OF MARYLAND by and through Milton B. Allen, State's Attorney for Baltimore City having made application for an order permitting the State's Attorney to disclose the

proceedings before and the contents of the Final Report of the Special Grand Jury in the above-captioned investigation to members of a Special Committee on the Municipal Court investigation of the Bar Association of Baltimore City;

AND IT APPEARING, from the facts set forth in the aforegoing petition that the process of selective disclosure as specified in the Order of this Court dated the 10th day of December, 1970 is not likely to be completed for some time;

AND IT FURTHER APPEARING, that disclosure of the data and information requested as aforesaid to the membership of said Special Committee in order for the Committee and the Bar Association to fulfill its necessary and desirable tasks would be in the public interest:

NOW, THEREFORE, IT IS ORDERED this 16th day of April, 1971, that the State's Attorney of Baltimore City be and is hereby authorized and directed to release and disclose to members of said Special Committee on the Municipal Court investigation of the Bar Association of Baltimore City the contents of the Final Report of the Special Grand Jury investigating the operation of the Traffic Division of the Municipal Court of Baltimore City, together with the testimony and transcript of its proceedings and all the information, exhibits and data accumulated with respect to said investigation.

The Special Committee on the Municipal Court investigation of the Bar Association of Baltimore City shall keep the contents of all information thus obtained by it in strict confidence except insofar as released by the Committee to authorized persons with respect to any disciplinary proceeding which it may recommend or initiate hereafter.

IT IS FURTHER ORDERED that the Final Report of the Special Grand Jury be and is hereby unsealed but only for the purposes set forth in this Order.

AND IT IS FURTHER ORDERED that the action taken hereunder is subject to the further order of this court.

J. GILBERT PRENDERGAST,
Judge.

ADDENDUM

The court observes that before passing the above order it conferred with Milton B. Allen, Esquire, State's Attorney for Baltimore City, who urged that the order be signed by the court. Thereafter, the court conferred with the Honorable S. Ralph Warnken, who has been serving as Special Master in this matter and was assured by him that in his opinion the releasing of the documents and other data to the Special Committee of the Bar Association of Baltimore City would in no way be prejudicial to the trial of indictments now pending which were returned by the Special Grand Jury in 1970. Judge Warnken further recommended that the order be signed by this court to expedite the functions of the Special Committee of the Bar Association of Baltimore City.

J. GILBERT PRENDERGAST,
Judge.

APPENDIX 3

In the Criminal Court of Baltimore
State of Maryland

In Re Investigation by Commission on
Judicial Disabilities

PETITION TO OBTAIN COPY OF SPECIAL GRAND JURY TESTIMONY

Now comes the Commission on Judicial Disabilities, by and through its Chairman, Robert C. Murphy, who makes application to this Honorable Court for an order authorizing it to obtain a copy of all testimony heard by and before the Special Grand Jury of Baltimore City, which convened on November 10, 1969 for the purpose of investigating the Traf-

fic Division of the Municipal Court of Baltimore City, said investigation having been completed on October 26, 1970.

(1) That the Commission on Judicial Disabilities was created by Section 4B of Article IV of the Maryland Constitution and is empowered to investigate complaints against judges of the Maryland judiciary and, where warranted, to recommend to the Court of Appeals of Maryland, after hearing, the censure, removal, or retirement of any such judge who has committed acts constituting misconduct in office, or who have persistently failed to perform the duties of office, or who have engaged in conduct prejudicial to the proper administration of justice.

(2) That by order of the Criminal Court of Baltimore dated April 16, 1971 (Prendergast, J.) a copy of the above described testimony of the Special Grand Jury of Baltimore was made available to the Special Committee of the Bar Association of Baltimore City on the Municipal Court Investigation for use by the Committee in the conduct of its investigation, the Committee being authorized to release the contents of said testimony "to authorized persons with respect to any disciplinary proceeding which it may recommend or initiate hereafter."

(3) By letter dated June 25, 1971 the chairman of the Bar Association of Baltimore City directed the State's Attorney of Baltimore City to deliver, and he did deliver, a copy of the testimony of the Special Grand Jury unto the Commission on Judicial Disabilities, which said copy was submitted for the information of said Commission.

(4) That while the Commission on Judicial Disabilities has thus been afforded informational access to the Special Grand Jury testimony, it now requires in pursuance of its constitutional duties, that a copy of said testimony be formally supplied it, in its own name and for its own use.

(5) That all proceedings, testimony, and evidence coming before the Commission on Judicial Disabilities is, by Section 4B(A) of Article IV of the Maryland Constitution, confidential and privileged, unless and until the record in a proceeding before the Commission is filed with the Court of

Appeals of Maryland, at which time it loses its confidential character.

(6) That the State's Attorney of Baltimore City, by his signed concurrence below, has indicated that obtention of said Special Grand Jury testimony by the Commission in pursuance of its constitutional responsibilities is not likely to prejudice the trial of any cases now pending before the Court, and he therefore has no objection to the Commission obtaining said testimony.

WHEREFORE your petitioner prays that this Honorable Court pass an order authorizing the obtention of the Special Grand Jury testimony by the Commission on Judicial Disabilities for use by it in the course of its official duties and responsibilities under the Constitution of Maryland.

ROBERT C. MURPHY, Chairman
Commission on Judicial Disabilities.

Concurring:
MILTON B. ALLEN,
State's Attorney of Baltimore City.

In the Criminal Court of Baltimore City
State of Maryland

In Re Investigation by Commission on
Judicial Disabilities

ORDER

Upon the aforegoing petition, it is ORDERED this 26th day of October, 1971, by the Criminal Court of Baltimore City, that the Commission on Judicial Disabilities, acting by and through its duly authorized members and agents, be given a copy, or full access to a copy, of all testimony heard by and before the Special Grand Jury of Baltimore City, which convened on November 10, 1969 for the purpose of investi-

gating the Traffic Division of the Municipal Court of Baltimore City, said investigation having been completed on October 26, 1970; and the Commission may use all such testimony and evidence for its official purposes in the course of any investigation or prosecution which it may conduct in pursuance of its constitutional authority, as implemented by Maryland Code, Article 40, Section 45, and Maryland Rule 1227.

J. GILBERT PRENDERGAST,
Judge.

True Copy
Attest:
LAWRENCE R. MOONEY, Clerk
Criminal Court of Baltimore.

APPENDIX 4

MARYLAND RULES OF PROCEDURE

Rule 1227. CENSURE, REMOVAL OR RETIREMENT OF JUDGES.

a. Definitions.

In this rule, unless the context or subject matter otherwise requires:

1. Commission.

"Commission" means the Commission on Judicial Disabilities.

2. Judge.

"Judge" means a judge of the Court of Appeals, the Court of Special Appeals, of the Circuit Courts for the counties, of the Supreme Bench of Baltimore City, of the District Court, of the Orphan's Courts and all other judges elected or subject to election and those appointed if the full term of the particular office is for not less than four years.

3. Chairman.

"Chairman" includes the acting chairman.

4. Shall.

"Shall" is mandatory and "may" is permissive.

5. Mail.

"Mail" and "mailed" include ordinary mail and personal delivery.

6. Registered Mail.

"Registered mail" means either registered or certified mail, deposited with the United States Post Office, with postage prepaid and with a request for a return receipt.

7. Gender.

The masculine gender includes the feminine gender.

b. Chairman and Acting Chairman of Commission.

The Commission shall select one of its members to serve as Chairman and one to serve as acting Chairman in the event the Chairman is unable to serve because of absence, illness or disqualification.

c. Executive Secretary for Commission.

The Commission may select an executive secretary who shall have such administrative powers and duties as the Commission shall delegate to him.

d. Interested Member of the Court of Appeals or Commission.

A judge who is a member of the Commission or the Court of Appeals shall not participate as such in any proceedings involving his own censure, removal or retirement.

e. Proceedings Confidential.

All papers filed with and proceedings, testimony and evidence before the Commission shall be confidential until a record thereof is filed by the Commission in the Court of Appeals.

f. Preliminary Investigation.

1. Upon Receipt of Verified Statement.

The Commission, upon receiving a verified statement, not obviously unfounded or frivolous, alleging facts indicating that a judge has committed acts constituting misconduct in office, or persistent failure to perform the duties of his office or conduct prejudicial to the proper administration of justice, or that he has a disability seriously interfering with the performance of his duties which is, or is likely to become permanent, shall make a preliminary investigation to determine whether formal proceedings should be instituted and a hearing held.

2. On Own Motion.

The Commission without receiving a verified statement may make such a preliminary investigation on its own motion.

3. Notice.

Before finally determining that formal proceedings should be instituted, the judge shall be notified of the nature of the complaint and the name of the person making the verified statement, if any, or that the investigation is on the Commission's own motion, and shall be afforded reasonable opportunity in the course of the preliminary investigation to present such matters as he may choose. Such notice shall be given by registered mail addressed to the judge at his chambers and at his last known residence.

4. Dismissal — Notice.

If the preliminary investigation does not disclose to a majority of the members not disqualified sufficient cause to warrant further proceedings, the judge and the complainant shall be notified of that action.

g. Formal Proceedings.

1. Notice.

(a) In Writing — Titling of Proceedings.

After the preliminary investigation has been completed, if the Commission decides that formal proceedings shall be instituted, the Commission shall without delay issue a written notice to the judge advising him of the institution of

formal proceedings to inquire into the complaint against him. Such proceedings shall be entitled:

"BEFORE THE COMMISSION ON JUDICIAL DISABILITIES Inquiry Concerning a Judge, No. ....."

(b) Content — Opportunity to Reply.

The notice shall specify in ordinary and concise language the complaint against the judge and the alleged facts upon which such complaint is based, and shall advise the judge of his right to file a written answer to the complaint against him within fifteen (15) days after service of the notice upon him.

(c) Service.

The notice shall be served pursuant to sections b and c of Maryland Rule 116 (Execution of Process by Private Person) by personal service of a copy upon the judge, but if it appears to the Commission that, after reasonable effort for a period of ten (10) days, personal service could not be had, service may be made upon the judge by mailing, by registered mail, copies of the notice addressed to the judge at his chambers and at his last known address.

h. Answer.

Within fifteen (15) days after service of the notice of formal proceedings, the judge may file with the Commission an original and five (5) legible copies of an answer, which shall be verified.

i. Hearing.

1. Setting Time for.

Upon the filing of an answer or upon expiration of the time for its filing, the Commission shall set a time and place for a hearing and give notice of such by mail to the judge at least twenty (20) days prior to the date set.

2. In Absence of Answer or Appearance.

At the time and place set for hearing, the Commission shall proceed with the hearing whether or not the judge has filed an answer or appears at the hearing.

3. Recording of Hearing.

The proceedings at the hearing shall be stenographically recorded or shall be recorded on dictation systems equipment.

4. Number of Commission Members at Hearing.

At the hearing before the Commission, at least a majority of the members not disqualified shall be present.

j. Procedural Rights of Judge.

1. To Evidence — Counsel — Witnesses.

In a proceeding under section g (Formal Proceedings) of this Rule, a judge shall have the right and reasonable opportunity to defend against the complaint by the introduction of evidence, to be represented by counsel, and to examine and cross-examine witnesses. He shall also have the right to the issuance of a summons for the attendance of witnesses to testify and for the production of books, papers and other evidentiary matter.

2. To Transcript of Testimony.

Where a transcript of the testimony has been prepared at the expense of the Commission, a copy thereof shall, upon request, be available for use by the judge and his counsel in connection with the proceedings, or the judge may arrange to procure a copy at his expense. The judge shall have the right, without any order or approval, to have all or any portion of the testimony in the proceedings transcribed at his expense.

3. Notice — Copy to Counsel.

Except as herein otherwise provided, wherever this Rule provides for giving notice or sending any matter to the judge, such notice or matter shall be sent to the judge at his residence unless he requests otherwise and a copy thereof shall be mailed to his counsel, if any.

k. Amendments.

The Commission, at any time prior to its decision may allow or require amendments to the notice of formal pro-

ceedings and may allow amendments to the answer. The notice may be amended to conform to proof or to set forth additional facts, whether occurring before or after the commencement of the hearing. In case such an amendment is made, the judge shall be given reasonable time both to answer the amendment and to prepare and present his defense thereto.

1. Extension of Time.

The Commission may extend for periods not to exceed thirty (30) days in the aggregate the time for filing an answer and for the commencement of a hearing before the Commission.

m. Hearing Additional Evidence.

The Commission may order a hearing for the taking of additional evidence at any time while the matter is pending before it. The order shall set the time and place of hearing and shall indicate the matters on which the evidence is to be taken. A copy of such order shall be sent by mail to the judge at least ten (10) days prior to the date of hearing.

n. Commission Vote.

If, after hearing, the Commission finds good cause it shall recommend to the Court of Appeals the censure, removal or retirement of the judge. The affirmative vote of a majority of the members of the Commission who were present at the hearing shall be necessary for a recommendation of censure, removal or retirement of a judge.

o. Record of Commission Proceedings.

The Commission shall keep a record of all proceedings concerning a judge. The Commission's decision shall be entered in the record. In all proceedings resulting in a recommendation to the Court of Appeals for censure, removal or retirement, the Commission shall prepare a transcript of the evidence and of all proceedings therein and shall make written findings of fact and conclusions of law with respect to the issues of fact and law in the proceedings.

p. Certification of Commission Recommendation.

Upon making a decision recommending the censure, removal or retirement of a judge, the Commission shall promptly file a copy of the recommendation certified by the Chairman of the Commission, together with the transcript and the findings and conclusions, with the Court of Appeals and shall immediately mail the judge, by registered mail, notice of such filing, together with a copy of such recommendation, findings and conclusions.

q. Review of Recommendation.

1. Notice of Hearing.

Upon filing by the Commission of a recommendation pursuant to Section p of this Rule, the Court of Appeals shall notify the judge of the date for hearing by the Court of Appeals on said recommendation. The date so set for hearing shall be not less than thirty (30) days from the filing of recommendation.

2. Written Exceptions.

Within fifteen (15) days after receipt by the judge of a notice provided by subsection 1 of this Section, he may file with the Court of Appeals written exceptions to the recommendation of the Commission, including therein such arguments on the facts and the law as he deems appropriate. An answer to any such exceptions may be filed by the Commission within ten (10) days after the filing of any such exceptions. Copies of exceptions and answers shall be served upon the Commission and the judge in the manner prescribed by Section c of Rule 306 (Service of Pleadings and Other Papers), and proof of such service shall be made in the manner prescribed by Section d of Rule 306 (Service of Pleadings and Other Papers). Exceptions and answers thereto shall be filed in eight (8) legible typewritten copies. Cases under this Rule shall be disposed of as soon as practicable and shall not be placed on the regular appeals docket.

3. Oral Argument.

Oral argument shall be had on the day fixed by the Court of Appeals for the hearing as provided in subsection 1

of this Section and shall be governed by Rule 846 (Oral Argument).

4. Proceedings Before Court of Appeals.

(a) Further Proceedings Before Commission — Remand.

If it shall appear that the purposes of justice will be advanced by permitting further proceedings before the Commission, the Court of Appeals may remand the matter to the Commission. An order remanding the proceedings shall express the purpose for the remand.

(b) Dismissal of Proceedings.

If the Court of Appeals determines not to censure, remove or retire the judge, or not to remand the proceedings to the Commission, it shall dismiss the proceedings.

(c) Finality of Decision — Opinion.

The Decision of the Court of Appeals shall be final. The decision shall be evidenced by the order of the Court of Appeals, which shall be certified under the seal of that Court by the Clerk and shall be accompanied by an opinion. The record in the case shall be retained by the Clerk of the Court of Appeals.

5. Waiver of Hearing.

The judge may, at any time up to and including the time of the hearing fixed pursuant to subsection 1 of this Section, waive his right to and the requirement of any such hearing by his written waiver, signed by him or his duly authorized representative and filed with the Court of Appeals. In the event of such waiver the Court of Appeals may decide and dispose of the matter without the necessity of a hearing.

6. Counsel for Commission.

The Commission may be represented in the proceedings in the Court of Appeals by counsel as authorized by law or designated by the Commission.

APPENDIX 5

June 7, 1971

HAND DELIVERED
Commission on Judicial Disabilities
c/o Professor Laurence M. Katz, Secretary
Room 125
University of Maryland
School of Law
500 West Baltimore Street
Baltimore, Maryland 21201

Gentlemen:

The Executive Council of the Bar Association of Baltimore City has ordered me to send you a copy of the Report of the Special Committee on the Municipal Court Investigation and of the abstracts and audit reports referred to therein. All of these are enclosed. I may be able to send you also in the near future certain abstracts withheld by order of Judge Prendergast which were possibly prejudicial to the defendants in pending indictments.

If there is any further way that I can be of assistance to the Commission, please do not hesitate to call upon me.

Sincerely,

DAVID P. GORDON, Chairman,
Special Committee on the
Municipal Court Investigation.

DPG/jar
Enclosures
cc: Harrison M. Robertson, Jr., Esq.

PRESIDENT AND EXECUTIVE COUNCIL
BALTIMORE CITY BAR ASSOCIATION

REPORT OF THE SPECIAL COMMITTEE ON THE MUNICIPAL COURT INVESTIGATION

This Report was adopted at a meeting held on Wednesday, May 19, 1971 attended by Stephen H. Sachs, H. Russell

Smouse, William B. Somerville, Howard A. Sweeten and David P. Gordon. The Special Committee has, for practical reasons, confined its investigation to the review of evidence adduced by the Office of the State's Attorney of Baltimore City in the course of its probe into alleged irregularities in the administration and judicial processes of the Municipal Court, which had been the subject of a series of articles in the Baltimore Sun. A special grand jury had been convened to receive the evidence, and, in addition to finding several indictments, it issued a report concerning the operation of the traffic division of the Municipal Court, which has recently been made public. Access to the record of the proceedings before the Grand Jury and the related investigative files of the State's Attorney was at first denied the Special Committee because of the opposition of State's Attorney Howard Cardin. Later, on petition filed on behalf of the Bar Association of Baltimore City by the Special Committee, qualified access for the Special Committee was ordered by Judge Prendergast, who had convened the Grand Jury. As a result of his order, the Special Committee began to receive abstracts of cases of suspected irregularity investigated by the State's Attorney and the Grand Jury, which abstracts had first been censored by Judge S. Ralph Warnken, whom Judge Prendergast had appointed in that role, to be certain that no material prejudicial to the pending Grand Jury indictment became available to the Special Committee.

Milton B. Allen, Esq., Mr. Cardin's successor as State's Attorney, felt differently about the risk of prejudice to pending indictments and, considering that the paramount public interest lay in full disclosure to the Special Committee, filed a petition to that effect with the Court on April 15, 1971. On the following day, Judge Prendergast passed an order authorizing and directing full disclosure to the Special Committee, requiring, however, that all information so disclosed be kept in strict confidence except as released by the Committee to authorized persons with respect to any disciplinary proceeding which it may recommend or initiate thereafter.

Subsequently to the order of April 15, 1971, uncensored abstracts of 524 additional cases investigated by the State's

Attorney and the Grand Jury were made available to the Special Committee. All of the abstracts had been prepared by Robert C. Stewart, Esq., formerly the Assistant State's Attorney who headed the investigating team. Each abstract is supported by a case file in the custody of the State's Attorney's office, but, except for some spot checking by the Chairman, the Special Committee did not examine these files.

The investigation of the State's Attorney and the Grand Jury seems to have been concentrated on traffic court proceedings in the Municipal Court during the year 1969. Practical considerations dictated this limitation. A total of 726 cases were found worthy of special inquiry. These were selected mainly because of suspicious circumstances uncovered by the Baltimore Sun reporter, Charles Whiteford, who made his data available to the State's Attorney, and also because of doubts arising from a special audit of 1969 Traffic Court records conducted by personnel of the office of the Comptroller of the State of Maryland.

The abstracts furnished to the Special Committee as described above, as well as some statistical data developed by the Auditors, appear to show a practice of signing Court slips certifying the trial of cases that never were tried at all, ticket fixing and tolerating, if not participating, in schemes by court clerks to exploit their positions for private gain.

The Special Committee recommends that the Executive Council submit or cause the above-described evidence to be submitted to the Commission on Judicial Disability.

The Special Committee wishes to point out that the overwhelming majority of the cases were parking ticket cases, and that the Committee's role, of necessity, has been evaluative only. It has not examined witnesses nor studied any documents other than the aforementioned abstracts and audit reports, nor has it conferred with any Judges of the Municipal Court nor made any independent investigation of

its own. Its recommendation is based solely on its review of the evidence adduced by the State's Attorney.

Respectfully submitted,

STEPHEN H. SACHS,
H. RUSSELL SMOUSE,
WILLIAM B. SOMERVILLE,
HOWARD A. SWEETEN,
By DAVID P. GORDON, Chairman.

APPENDIX 6

Excerpt from Report of Preliminary Investigation

"Both judges and their counsel were present at each deposition, and all objections were noted in the transcript. Wherever a witness had previously given testimony before the Grand Jury, the transcript of his or her testimony was given to counsel for the judges prior to the deposition in order to allow them the benefit of the previous testimony. This procedure was approved by the Commission's Chairman and was subject to the conditions that (1) no one else would be allowed to see the transcript (other than the two judges), (2) no copies would be made, and (3) the transcript would be returned prior to the deposition but would be available at the deposition for purposes of cross-examination."

APPENDIX 7

October 26, 1971.

Honorable Joseph L. Broccolino, Jr.
District 1
Municipal Court Building
Guilford Avenue and Madison Street
Baltimore, Maryland 21201

Dear Judge Broccolino:

In my capacity as Chairman of the Commission on Judicial Disabilities, I hereby notify you, pursuant to Rule 1227

of the Maryland Rules of Procedure, that the Commission, upon its own motion, has decided to undertake and conduct a preliminary investigation of your activities while sitting as a judge of the Municipal Court of Baltimore during 1968, 1969, and 1970.

The investigation will focus upon allegations of your participation in the improper handling and disposition of traffic tickets during those years which have come to the Commission's attention to determine whether you have committed any acts which may, under Section 4B of Article IV of the Maryland Constitution, constitute misconduct in office, persistent failure to perform the duties of your office, or conduct prejudicial to the proper administration of justice.

The Commission has designated Alan M. Wilner and Henry H. Hopkins as its counsel and has authorized them to assist the Commission and its Executive Secretary, Laurence M. Katz, Esq., in the conduct of the investigation.

In accordance with Rule 1227, you will be afforded an opportunity, during the investigation, to present such matters and evidence as you may choose. Of course, you have the right to be represented by counsel.

As part of its preliminary investigation, the Commission, through its Executive Secretary and counsel, plans to take the formal depositions of various witnesses. The Commission will consider the rules generally applicable to the taking of depositions as set forth in Chapter 400 of the Maryland Rules of Procedure, as applying to depositions taken as part of this investigation, except where the Commission finds that such application may not be practical. Specifically, such depositions may be taken upon not less than five days notice to you or your counsel, and you and your counsel will have the right to attend and examine any deponent.

The Commission will take the deposition of Isadore Terl on November 8, 1971, at 10:00 a.m. at the offices of the Attorney General of Maryland, Fourteenth Floor, One South Calvert Building, Baltimore, Maryland 21202.

The Commission will be obliged if you or your counsel will contact Mr. Wilner at 752-6780 as soon as possible.

For the Commission:

ROBERT C. MURPHY,
Chairman.

RCM: ja
cc: 2408 Mayfield Avenue
Baltimore, Maryland 21213

APPENDIX 8

October 5, 1972.

Honorable Joseph L. Broccolino, Jr.
District 1
Municipal Court Building
Guilford Avenue and Madison Street
Baltimore, Maryland 21201

Dear Judge Broccolino:

You are hereby notified, pursuant to Rule 1227g of the Maryland Rules of Procedure, that, upon review of the results of the preliminary investigation by the Committee into your activities as a Judge of the Municipal Court of Baltimore, the Commission has decided to institute and conduct formal proceedings for the purpose of inquiring into whether you have committed acts constituting misconduct in office, conduct prejudicial to the proper administration of justice, or persistent failure to perform the duties of your office while a Judge of the Municipal Court.

Specifically, the complaint against you is that, during the years 1967-70, you engaged in the practice of dismissing traffic tickets or suspending or reducing fines on traffic tickets in situations where: (1) the ticket was presented to you by a person whom you knew was not the actual defendant or an attorney representing the actual defendant, (2) no defense to the merits of the charge was presented to you, and (3) the sole or principal reason for your verdict was

to do a personal or political favor for the person presenting the ticket; or in situations where you accepted tickets from other persons and caused them to be disposed of in irregular manners for reasons of personal and political favoritism.

The alleged facts upon which the complaint is based are contained in the testimony of the witnesses deposed during the preliminary investigation and the exhibits thereto, of which you have copies, as well as the report of the Commission's Special Counsel of the preliminary investigation, a copy of which is enclosed.

In accordance with Rule 1227g you have a right to file a written answer to the complaint against you within fifteen days after service of this notice upon you. If you intend to file an answer, the answer must be verified and an original and at least five legible copies must be filed.

You are further advised that hearings with respect to the formal proceedings will commence on Monday, November 20, 1972, in the old Supreme Bench Courtroom on the Sixth Floor of the Court House, Baltimore, Maryland, at 9:30 a.m., and with the exception of Thursday, November 23, 1972, will continue from day to day thereafter until concluded.

If you wish to press and argue any of the objections to the proceedings reserved to you during the preliminary investigation, you should file a motion to that effect with your answer. The Commission will hear oral argument on any such objections on Monday, November 20, 1972. If you wish to file a written brief on any of such objections you should file eight copies thereof on or before Friday, November 3, 1972, and one additional copy should be delivered by said date to the Commission's special counsel Alan M. Wilner, Room 202, State House, Annapolis, Maryland 21404.

In accordance with Rule 1227g an additional notice of the time and place of the hearing will be sent to you upon the filing of an answer, the notice thereof being included in this letter for your additional convenience and that of your

counsel. A copy of this letter is being sent to your counsel, M. William Adelson.

Very truly yours,

LAURENCE M. KATZ

LMK: ja
cc: M. William Adelson, Esq.
1035 Maryland National Bank Building
Baltimore, Maryland 21202

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this ..... day of February 1974, two copies of the foregoing brief and appendix were mailed, postage prepaid, to Joseph L. Broccolino, Jr., Esq., 2408 Mayfield Avenue, Baltimore, Maryland 21213.

JOHN F. DAVIS